IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/08/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.24246 of 2003
and CRL.OP.26677 AND 26706/2003
AND CRL.M.P.Nos.6874,7510 AND 7520/2003.

M.Selvaraj .. Petitioner in Crl.O.P.24246/2003
G.Rajamani .. Petitioner in Crl.O.P.26677/2003
R.Rajarathinam .. Petitioner in Crl.O.P.26706/2003

-Vs-

The Inspector of Police,
Economic Offences Wing-II,
Virudhunagar .. Respondent in all the Crl.O.Ps.

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure for the reliefs as stated therein.

!For petitioners in
all the Crl.O.Ps. :Mr.R.Karuppan

For respondent :Mr.K.Abudu Kumar Rajarathinam
Govt.Advocate(crl.side)

:COMMON ORDER

All the above criminal original petitions have been filed under Section 482 of the Code of Criminal Procedure praying to quash the FIR in Cr.No.4 of 2000, dated 19.6.2000 and the consequential chargesheet if any filed, insofar as the petitioners is concerned and award damages to the petitioners to the tune of Rs.5 lakhs each, for the harassment and agony to which they were subjected to.

2. The petitioners are respectively A.4,A.1 and A.3 in a row of six accused, in the case registered by the respondent for the offence punishable under Sections 406 and 420 IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in financial Establishments) Act, 1997. When the case is pending investigation, the petitioners have come forward to file the above criminal original petitions for the relief extracted supra.

3. The case of the petitioners is that A.1 in the above case i.e. G.Rajamani was running a business under the name and style of G.R. Mani

Textiles from 1988 and due to some financial crisis, he closed down the business and without being able to pay the creditors, he filed an Insolvency Petition No.7 of 1999 before the Court of Subordinate Judge, Srivilliputhur; that the entire transaction was borrowing against receipts and not even based on promissory notes and the total liabilities were about Rs.3.5 crores and the assets were about Rs.1.75 crores and al the creditors appeared before the Court through their counsel and lodged their clams; that later on,by a vile design, a few of the creditors went and lodged a complaint with the respondent, who even though initially refused to register the case, has ultimately for some extraneous reasons, has registered the FIR.

4. The petitioners would further submit that fearing the threats of the arrest, a compromise talk was initiated in the respondent Police Station wherein an agreement was entered into and endorsed on a stamp paper to the effect that the petitioners were to liquidate their independent properties and to pay a total sum of Rs.18 lakhs to the creditors and accordingly, they have paid a sum of Rs.16 lakhs to the creditors, who in turn issued a receipt expressing full and final satisfaction of consideration towards discharge of their debts, by endorsing the receipt of amount and affixing their signature or their thumb impression and this document was dated 7.12.2000; that while the matter stood foreclosed and the aggrieved parties were satisfied, the first respondent, after a gap of about 2 years five months has renewed harassing the petitioners from 22.5.2003 and periodically asking them to come and appear before him on a weekly basis and in the course of the meeting, they would throw veiled threats to the effect that the petitioners and their family members would be arrested.

5. The petitioners would further submit that the contents of the complaint does not attract any of the provisions of the TNPID Act so as to clothe the petitioners; that the entire transaction was borrowing loans under good faith by issuing a receipt which is not enforceable under the civil law also; that the FIR does not disclose any material in form of fixed deposit receipts or the failure to pay the principal or interest thereon. On such grounds, the petitioners would pray for the reliefs extracted supra.

6. The learned Government Advocate on the criminal side would stiffly oppose the above criminal original petitions on ground that the petitioners are the defaulters of public money and the investigation is at the threshold and all the accused in the case are absconding. On such grounds, the learned Government Advocate on the criminal side would pray to dismiss all the above criminal original petitions.

7. In the recent judgment of the Honourable Apex Court delivered in UNION OF INDIA vs. PRAKASH P.HINDUJA AND ANOTHER reported in IV (200 3) Supreme Laws Today 335, the Honourable Apex Court, considering the point that `whether the High Court can exercise its inherent powers under Section 482 of the Code of Criminal Procedure in a matter where the investigation is pending', and following the earlier decisions reported in (1) AIR 1945 PC 18 (EMPEROR Svs. NAZIR AHMAD), (2) AIR 196 3 SC 447 (STATE OF WEST BENGAL vs. S.N.BASAK) (3)1963 SC 117 (ABHINANDAN JHA AND OTHERS vs. DINESH MISHRA), and (4) 1980 (1) SCC 554 (STATE OF BIHAR AND ANOTHER vs. JAC

SALDANHA AND OTHERS) has held:
"... the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer-in-charge of police station in Court under Section 173(2) Cr.P.C., this field being exclusively reserved for the Investigating Agency."

8. Since in the cases in hand it is reported that the investigation is pending, the proposition held by the Honourable Apex Court would squarely become applicable to the cases in hand and the above criminal original petition becomes liable only to be dismissed. However, since it is reported on the part of the learned counsel for the petitioner that even though the crime is of the year 2000, still the respondent Police are reporting that the investigation is pending, this Court is of the view that a direction issued to the respondent Police to complete the investigation and file the final report in accordance with law in a time bound manner, will serve the ends of justice and hence the following order:
In result,
(i) All the above criminal original petitions are without merit and the same are dismissed as such.
(ii)The respondent is directed to complete the investigation in Cr. No.4 of 2000 on his file and file the final report, in accordance with law, within sixty days from the date of receipt of a copy of this order.
Consequently, Crl.M.P.Nos.6874,7510 and 7520 of 2003 are also dismissed.

Index: Yes
Internet: Yes

Rao

To

1.The Inspector of Police,
Economic Offences Wing-II,
Virudhunagar.

2.The Public Prosecutor,
High Court, Madras.

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